

COMMONWEALTH OF KENTUCKY
BEFORE THE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BRACKEN)
COUNTY WATER DISTRICT FOR A RATE) CASE NO. 2021-00415
ADJUSTMENT PURSUANT TO 807 KAR 5:076)

MOTION FOR RECONSIDERATION AND CLARIFICATION

Pursuant to KRS 278.400 and 807 KAR 5:001, Section 5, Bracken County Water District (“Bracken District”) moves for reconsideration of the Public Service Commission’s Order of July 25, 2022 to correct certain misstatements set forth therein and for clarification of the District’s authority to place its proposed rates into effect subject to refund.

In support of its Motion, Bracken District states:

1. On July 25, 2022, the Public Service Commission (“Commission”) issued an order in this matter in which it found that Bracken District had accepted the “accepted the amount of the revenue increase, the allocation to the rate classes, and the design of the proposed rates set forth in the Commission Staff’s Report.”¹ It further found that, as a result of this acceptance, Bracken District had amended its application for a rate adjustment, should be required to publish notice of its acceptance of Commission Staff-recommended rates, and was prohibited by 807 KAR 5:076, Section 11(3)(f) from placing its proposed rates into effect for a period of six months from June 16, 2022.

2. The Order incorrectly states that Bracken District accepted the amount of the revenue increase, the allocation to the rate classes, and the design of the proposed rates set forth in the Commission Staff’s Report. **Bracken District did not accept the proposed rates.** While

¹ Order of July 25, 2022 at 1.

Bracken District stated in its Response to the Commission Staff Report its general acceptance of Commission Staff's findings, it also noted exceptions to those findings. More specifically, it noted that Commission Staff's revenue requirement calculation had failed to consider adjusted revenue from late payment fees and that this failure resulted in the overstatement of Revenue Required from Rates by \$28,416. It stated that Total Revenue Required from Rates was only \$1,984,151, not the recommended \$2,012,567. Bracken District also stated that adjustments to test period purchased water and purchase power expenses were required to reflect the discovery of billing errors from Bracken District's wholesale water supplier that occurred during the test period. These adjustments increased pro forma operating expenses by \$966. Overall, these exceptions to the Commission Staff's findings would result in a Total Revenue Required from Rates of \$1,985,117. This revenue requirement results in rates that differ from those Commission Staff recommended and which the Commission has ordered Bracken District to publish. These rates are set forth in Exhibit A to this Motion.

3. While Bracken District acknowledges that its general acceptance of the Commission Staff's findings triggers an obligation under 807 KAR 5:076, Section 11(3)(f) to publish notice of the rates resulting from a higher Total Revenue Required from Rates, the Commission Staff-recommended rates are not correct due to the computational error. Publishing the Commission Staff-recommended rates would mislead the public. The proposed notice also states that Bracken District has accepted Commission Staff-recommended revisions to Bracken District's existing non-recurring charges. Bracken District neither agreed to or requested these proposed revisions but instead noted its disagreement with those revisions.² Furthermore, to the extent that those recommended non-recurring charges are lower than present charges, it does not

² Response to Commission Staff Report at 3-4.

appear that 807 KAR 5:076, Section 11(3)(f) requires their inclusion in any notice. Bracken District proposes to publish the notice found at Exhibit B of this Motion. The language of this proposed notice is consistent with the intent and requirements of 807 KAR 5:076, Section 11(3)(f).³

4. While Bracken District has expressed its general agreement with Commission Staff's findings, it has not amended its Application. Bracken District was only complying with the requirements of the Commission's Order of February 17, 2022 in this matter. In that Order, the Commission directed:

If Commission Staff finds that Bracken District's financial condition supports a higher rate than Bracken District proposes or the assessment of an additional rate or charge not proposed in Bracken District's application, Bracken District in its response to the Commission Staff Report, shall also state its position in writing on whether the Commission should authorize the assessment of the higher rate or the additional rate or charge.

At no place in its response does Bracken District state that it is amending its application. Its agreement with the findings contained in the Commission Staff Report is analogous to a stipulation of fact in which one party agrees to the facts or averments presented by another party. This view is consistent with the Commission's rules of procedure, which provide: "[T]he parties to a case

³ Bracken District recognizes that one purpose of 807 KAR 5:076, Section 11(3)(f) is prevent utilities from gaming the ratemaking process by understating their revenue requirement and relying upon Commission Staff to recommend a higher revenue requirement. Bracken District prepared its application in good faith and made no attempt to understate its revenue requirement or to disguise its present financial condition. The principal factors for the difference in Bracken District's requested revenue requirement and the Commission Staff recommended revenue requirement are (1) the difference in the level of revenue from water sales; (2) the inclusion in debt service requirements of debt issued after the filing of the application; and (3) removal of labor component from non-recurring charges. As to the first factor, Bracken District used actual reported test period sales to determine revenues from water sales. Relying upon Bracken District's billing analysis, Commission Staff adjusted this amount downward. As to the second factor, Bracken District could not consider the principal and interest payments for unissued debt in its application as they were not known and measurable as the Commission had not yet authorized the loan or approved the underlying construction project and no loan agreement had been executed. As to the third factor, Commission Staff recommended significant reductions in most of Bracken District's non-recurring charges to remove the labor costs included in those charges. As a result, the revenue from those charges decreases and requires a corresponding increase in revenue from rates for water service.

may agree among themselves or **with commission staff** upon the facts or any portion of the facts involved in the controversy, which stipulation shall be regarded and used as evidence at the hearing.”⁴ Bracken District’s statement of agreement is merely evidence to be considered by the Commission.

5. By accepting (or stipulating to) the findings of the Commission Staff Report, Bracken District has merely noted its agreement with Commission Staff’s conclusions and recommendations. The Commission remains at liberty to accept those findings and recommendations or to reject them.⁵ As Bracken District has taken no action to amend its application, the Commission remains free to focus solely on its proposed rates or to consider the Commission Staff-recommended rates. As the Commission has expressed on numerous occasions that it has a legal and moral duty under KRS 278.030 to establish “fair, just and reasonable rates” and that, when a utility’s financial condition supports an award of rates higher than those requested, this duty requires the Commission to order the higher rates. Bracken District assumes that the Commission will remain faithful to and consistent with its past pronouncements and establish the appropriate rates based upon the evidence of the utility’s cost to provide service.

6. The Order’s position that Bracken District’s agreement with Commission Staff’s recommendation of higher rates effectively amends the application and constitutes a new application conflicts with the Commission’s past decisions in which a utility’s acceptance of or

⁴ 807 KAR 5:001, Section 9(6) (emphasis added).

⁵ See 807 KAR 5:076, Section 11(3)(e) (“Acceptance of the findings and recommendations contained in the commission staff report by all parties in a proceeding shall not preclude the commission from conducting a hearing on the application, taking evidence on the applicant’s financial operations, or ordering rates that differ from or conflict with the findings and recommendations established in the commission staff report.”).

agreement with Commission Staff-recommended rates was not considered an amendment of the utility's application that restarting the statutory clock.⁶

7. Bracken District requests that the Commission clarify that its Order of July 25, 2022 does not prohibit Bracken District from placing the rates set forth in its Application into effect subject to refund on August 11, 2022. If Bracken District's general acceptance of the findings of the Commission Staff Report is deemed an amendment of the rates set forth in Bracken District's application, then it may not lawfully assess the rates set forth in its Application as those rates have been withdrawn. It also may not charge the "amended rates" as 807 KAR 5:076, Section 7(1) prohibits their assessment until the Commission approves those rates or six months have passed since the amendment.⁷ Bracken District takes the position that, as it has not amended its Application, KRS 278.190(3) and 807 KAR 5:076, Section 7(2) permit it to charge the rates set forth in its Application six months after the Application's filing. Bracken District filed its Application with the Commission on January 27, 2022. Therefore, it may begin charging those rates, subject to refund. Bracken District intends to place the rates set forth in its Application into effect, subject to refund, on August 11, 2022.

8. Should the Commission prohibit Bracken District from placing those rates into effect, subject to refund, the Commission will be undermining its own efforts to improve Bracken District's financial position. In Case No. 2020-00271,⁸ the Commission found that Bracken

⁶ See, e.g., *Electronic Application of Adair County Water District for An Alternative Rate Adjustment*, Case No. 2021-00316 (Ky. PSC Feb. 9, 2022); *Electronic Application of Adair County Water District for An Alternative Rate Adjustment*, Case No. 2021-00315 (Ky. PSC Feb. 9, 2022); *Electronic Application of North Logan Water District No. for An Alternative Rate Adjustment*, Case No. 2021-00286 (Ky. PSC Dec. 14, 2021); *Electronic Application of Grayson County Water District for A Rate Adjustment Pursuant To 807 KAR 5:076*, Case No. 2021-00191 (Ky. PSC Dec. 14, 2021); *Electronic Application of South Eastern Water Association, Inc. for A Rate Adjustment Pursuant To 807 KAR 5:076*, Case No. 2021-00126 (Ky. PSC Sep. 17, 2021).

⁷ According to the Order of July 25, 2022, the "amendment" of Bracken District's Application occurred on June 16, 2022 when Bracken District submitted its response to the Commission Staff Report

⁸ *Electronic Application of Bracken County Water District for The Issuance of a Certificate of Public Convenience and Necessity to Construct A Water System Improvements Project and An Order Authorizing the Issuance of Securities*

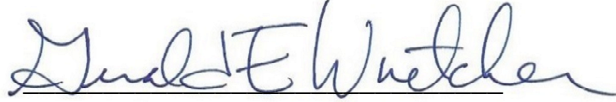
District would not be within its lenders' debt service coverage requirements beginning in 2022 and would not meet the Commission's debt service coverage standards beginning in 2021. To improve Bracken District's financial position, the Commission ordered Bracken District to apply for a rate adjustment no later than January 27, 2022. Bracken District complied with that order by filing the application currently before the Commission. If the Commission now determines that Bracken District has "amended" its Application and refuses to permit Bracken District to place its proposed rates into effect, subject to refund, it will prevent Bracken District from recovering additional monthly revenues of \$10,000 – revenue that the Commission has previously found that the water district urgently needs.

WHEREFORE, Bracken District requests that the Commission (1) reconsider its Order of July 25, 2022; (2) modify the notice that Bracken District must to its customers regarding the Commission Staff-recommended rates and allow Bracken District to use the notice set forth in Exhibit B to this Motion; (3) find that Bracken District has not amended its Application; and (4) clarify its Order of July 25, 2022 to find that Bracken District may place into effect, subject to refund, the rates set forth in its filed Application after providing the Commission with notice of its intent to place those rates into effect.

Pursuant to The Provisions of KRS 278.020, KRS 278.300, and 807 KAR 5:001, Case No. 2020-00271 (Ky. PSC Jan. 27, 2021).

Dated: July 29, 2022

Respectfully submitted,

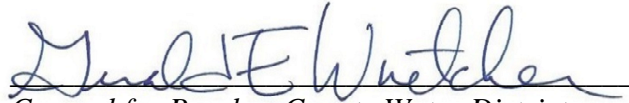


Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3017
Fax: (859) 259-3517
gerald.wuetcher@skofirm.com

Counsel for Bracken County Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Commission on July 29, 2022 and that there is currently no party that the Commission has excused from participation by electronic means in this proceeding.



Counsel for Bracken County Water District

EXHIBIT A

RATES TO GENERATE TOTAL REVENUES OF \$1,985,117

PHASE 1 (50% of Revenue Requirement)

	Proposed Rate
First 2,000 Gallons	\$30.47 Minimum Bill
Next 38,000 Gallons	0.01164 Per Gallon
Over 40,000 Gallons	0.00923 Per Gallon
Wholesale	0.00444 Per Gallon
Bulk Sales	10.50 Per 1,000 Gallons
Multiple Users Minimum	\$30.47 Per Unit

PHASE 2 (100% of Revenue Requirement)

	Proposed Rate
First 2,000 Gallons	\$ 33.06 Minimum Bill
Next 38,000 Gallons	0.01262 Per Gallon
Over 40,000 Gallons	0.01002 Per Gallon
Wholesale	0.00481 Per Gallon
Bulk Sales	11.50 Per 1,000 Gallons
Multiple Users Minimum	\$33.06 Per Unit

EXHIBIT B

NOTICE

On January 27, 2022, Bracken County Water District (“Bracken District”) applied to the Kentucky Public Service Commission (“the Commission”) for authority to adjust its monthly rates for water service. Bracken District took this action to comply with the Commission’s Order of January 27, 2021 in Case No. 2020-00271. In its application, Bracken District requested a 15 percent increase in its rates that would produce additional annual revenues of \$254,349. Bracken District proposed to implement the increase in two phases over one year.

On June 2, 2022, the Commission’s Staff issued a report on Bracken District’s application in which it recommended that the Commission increase Bracken District’s current rates by 20.45 percent to produce additional annual revenues of \$341,659. Commission Staff proposed the increase be implemented in two phases over one year. Bracken District has generally accepted Commission Staff’s recommendations but noted errors in Commission Staff’s findings that will reduce the proposed increase to 18.53 percent and will result in additional annual revenues of \$314,208. Bracken District has requested that the Commission authorize rates that are consistent with the Commission Staff’s findings. These rates are set forth below. Phase 1 rates would become effective upon the Commission’s approval. Phase 2 rates would become effective one year later.

PHASE 1				
	Present Rate	Proposed Rate	Change (\$)	Change (%)
First 2,000 Gallons	\$27.89 Minimum Bill	\$30.47 Minimum Bill	\$2.58	9.25
Next 38,000 Gallons	0.01065 Per Gallon	0.01164 Per Gallon	0.00099 Per Gallon	9.30
Over 40,000 Gallons	0.00845 Per Gallon	0.00923 Per Gallon	0.00078 Per Gallon	9.18
Wholesale	0.00406 Per Gallon	0.00444 Per Gallon	0.00038 Per Gallon	9.36
Bulk Sales	9.50 Per 1,000 Gallons	10.50 Per 1,000 Gallons	\$1.00 Per 1,000 Gallons	10.53
Multiple Users Minimum	\$27.89 Per Unit	\$30.47 Per Unit	\$2.58 Per Unit	9.25
PHASE 2				
	Present Rate	Proposed Rate	Change (\$)	Change (%)
First 2,000 Gallons	\$ 27.89 Minimum Bill	\$ 33.06 Minimum Bill	\$5.17	18.54
Next 38,000 Gallons	0.01065 Per Gallon	0.01262 Per Gallon	0.00197 Per Gallon	18.50
Over 40,000 Gallons	0.00845 Per Gallon	0.01002 Per Gallon	0.00157 Per Gallon	18.58
Wholesale	0.00406 Per Gallon	0.00481 Per Gallon	0.00075 Per Gallon	18.47
Bulk Sales	9.50 Per 1,000 Gallons	11.50 Per 1,000 Gallons	\$2.00 Per 1,000 Gallons	21.05
Multiple Users Minimum	\$27.898 Per Unit	\$33.06 Per Unit	\$5.17	18.54

If the Commission approves the proposed water rate, the increase in a customer’s monthly bill will be:

Customer	Average Usage (gals)	Monthly Bill at Current Rate	Monthly Bill at Phase 1 Rate	Monthly Bill Increase (%)	Monthly Bill at Phase 2 Rate	Monthly Bill Increase (%)
Retail Customer	3,770	\$ 46.74	\$ 51.07	9.27	\$ 55.40	18.52
Wholesale Customer	642,650	\$ 2,609.16	\$ 2,827.66	8.66	\$ 3,091.15	18.47

The Commission has established Case No. 2021-00415 to review Bracken County Water District's application. Any person may examine the documents filed in this proceeding or at the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m., or through the Commission's Web site at <https://psc.ky.gov/Case/ViewCaseFilings/2021-415>. The Commission Staff report may be viewed at https://psc.ky.gov/pscscf/2021%20Cases/2021-00415/20220602_STAFF_REPORT.pdf.

Written comments regarding Bracken District's application and the proposed rates may be submitted to the Commission through the Commission's Web Site at <http://psc.ky.gov> or by e-mail to psc.comment@ky.gov or by mail to Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602. Comments should be submitted no later than 30 days from the publication of this notice

A person may submit a timely written request for intervention to Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky 40602, establishing the grounds for the request including the person's status and interest. If the Commission does not receive a written request for intervention within thirty (30) days of the publication of this notice, it may take final action on the proposed rates.

Bracken County Water District
Publication Date: August 8, 2022